

## **Part 10**

### **Closing Estates**

#### **75-3-1001 Formal proceedings terminating administration -- Testate or intestate -- Order of general protection.**

- (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs, and to adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.
- (2) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

Enacted by Chapter 150, 1975 General Session

#### **75-3-1002 Formal proceedings terminating testate administration -- Order construing will without adjudicating testacy.**

A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will, and to adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part

of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of Section 75-3-1001.

Enacted by Chapter 150, 1975 General Session

**75-3-1003 Closing estates -- By sworn statement of personal representative -- Waiver of accountings.**

- (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings when all of the distributees of the estate consent in writing, a personal representative may close an estate by filing with the court no earlier than four months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representative, or a prior personal representative whom the personal representative has succeeded, has:
  - (a) determined that the time limitation for presentation of creditors' claims has expired;
  - (b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and
  - (c) sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.
- (2) If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.
- (3) Any accounting required under this section or either Section 75-3-1001 or 75-3-1002 may be waived when all of the distributees of the estate consent in writing to the waiver.

Amended by Chapter 179, 1992 General Session

**75-3-1004 Liability of distributees to claimants.**

After assets of an estate have been distributed and subject to Section 75-3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

Amended by Chapter 194, 1977 General Session

**75-3-1005 Limitations on proceedings against personal representative.**

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the

personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

Enacted by Chapter 150, 1975 General Session

**75-3-1006 Limitations on actions and proceedings against distributees.**

- (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is barred at the later of:
  - (a) as to a claim by a creditor of the decedent, one year after the decedent's death; and
  - (b) as to any other claimant and any heir or devisee, at the later of:
    - (i) three years after the decedent's death; or
    - (ii) one year after the time of distribution thereof.
- (2) This section does not bar an action to recover property or value received as the result of fraud.

Amended by Chapter 179, 1992 General Session

**75-3-1007 Certificate discharging liens securing fiduciary performance.**

After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety.

Enacted by Chapter 150, 1975 General Session

**75-3-1008 Subsequent administration.**

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently-discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

Enacted by Chapter 150, 1975 General Session